IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 501 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VISHNUBHAI SHAMJIBHAI BHADVANA

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 501 of 2004

MR KIRTIDEV R DAVE for Petitioner No. 1

MR.DEVANG D DAVE for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2-3

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 09/09/2004

ORAL JUDGEMENT

1. The petitioner has preferred this petition challenging the order dated 01.08.2003 passed by the District Development Officer [DDO, for short, hereinafter] under section 57 of the Gujarat Panchayat Act 1993, [hereinafter referred to as the Act] whereby the petitioner was removed as Sarpanch of Bhadvana Gram Panchayat. The petitioner has also challenged the order dated 20.09.2003 passed by the Additional Development Commissioner whereby the order passed by the DDO is confirmed and the appeal is dismissed.

2. Heard Mr. Kirtidev Dave for the petitioner, Mr. Devang Dave for respondent No. 1 and Ms. D.S. Pandit, learned Assistant Government Pleader for respondents No. 2 and 3. With the consent of the learned counsel appearing for the parties, this matter is heard finally.

3. Mr. Kirtidev Dave for the petitioner submitted that at the most it can be said to be a procedural irregularity which would not attract the power under section 57 of the Act. In support of this contention, Mr. Dave has relied on two judgements of this Court in the case of KAMLABEN vs. ADDL. DEVELOPMENT COMMISSIONER reported in 2000 (2) GLR 1174 and in the case of H.G. Hadvani vs. State reported in 2000 (1) GLR 32. Mr. Dave also submitted that large number of document were produced by the petitioner in the proceedings before the Development Commissioner, but they are not considered by the authority. He also submitted that as such, on account of earthquake, the old Panchayat office was to be demolished and new construction was to be made, and he submitted that the petitioner has used his power as Sarpanch, and complaints were made against the Secretary of the Gram Panchayat, but instead of taking action against the Secretary, the petitioner is removed from the post of Sarpanch. He further submitted that there was no material with the authority to arrive at the conclusion that loss is caused to the public to the tune of Rs.30,000/_ and, therefore, he submitted that the impugned orders deserve to be quashed and set aside as prayed in the petition.

3.1 Mr. Devang Dave, learned advocate for respondent No. 1 and Ms. Pandit, learned A.G.P. for respondents No. 2 and 3 have supported the orders passed by the DDO as well as by the DDO and Additional Development Commissioner.

4. Having considered the above and having perused the orders passed by the DDO and the Additional Development Commissioner, it appears that there are

concurrent finding of facts that the petitioner has caused a loss of Rs.30,000/_ to the property of the Gram Panchayat. The Panchayat had resolved for re-construction of the office at its old building. Instead of making reconstruction at the old building, the construction for providing drinking water to cattle and for preservation of cattle were demolished by the petitioner and the construction of office is made at that place. It appears that when there was a hue and cry for such an action on the part of the petitioner, subsequently a circular resolution is passed of the Gram Panchayat whereby the action is approved. The show cause notice was issued to the petitioner, and it is ultimately found by the authority, after examining the record, that demolition of the construction for providing drinking water to cattle and for preservation of cattle, is made without prior permission of the competent authority and as a result thereof, there is loss to public property. Merely because the body of the gram Panchayat has resolved by a circular resolution, it cannot be said that non-obtaining permission is a procedural lapse. The petitioner, who is an elected representative of the gram Panchayat, while exercising power as Sarpanch of the Gram Panchayat, is expected to act as a prudent and responsible office bearer of the Gram Panchayat. If his action is in open defiance to the requirement under law, power under section 57 of the Act would be attracted. Not only that, but one additional reason mentioned for exercising of the power is, after withdrawal of the amount, the voucher is not produced for a period of 7 months. Even if the second ground is considered leniently, the first ground for causing damage to the property of the Gram Panchayat of Rs.30,000/_, in my view, is sufficient to attract the power of the authority for removal. This Court, while exercising power under Article 227 of the Constitution cannot re-appreciate the evidence and arrive at a different conclusion, and such is not the scope of judicial scrutiny while exercising power under Article 226/227 of the Constitution of India against the decision of the authority for removal of Sarpanch under the Act. The reliance placed upon the aforesaid decision is ill-founded inasmuch as the facts of the present case cannot be said to be a procedural lapse, but is a serious lapse on the basis of which it can be said that the power is misused, and the petitioner has committed misconduct.

5. Under the above circumstances, there is no merit in the petition and the petition deserves to be dismissed. Hence dismissed. Rule is discharged. Ad-interim relief vacated. No order as to costs.

mathew [JAYANT PATEL, J.]